

1 THURSDAY, JANUARY 23, 2003

2 AFTERNOON SESSION

3 --oOo--

4 The matter of LAURENCE LUCIER and LAURIE LUCIER,
5 Plaintiffs, versus PHILIP MORRIS INCORPORATED and
6 R.J. REYNOLDS TOBACCO COMPANY, Defendants, Case No.
7 02AS01909, came on regularly this day before the Honorable
8 Steven H. Rodda, Judge of the Superior Court of the State
9 of California, for the County of Sacramento, Department One
10 at 1:30 p.m.

11 The Plaintiffs, LAURENCE LUCIER and LAURIE LUCIER,
12 were represented by GARY M. PAUL, Attorney at Law; ROBERT
13 M. BROWN, Attorney at Law (not present); and MARY
14 ALEXANDER, Attorney at Law.

15 The Defendant, PHILIP MORRIS INCORPORATED, was
16 represented by GERALD V. BARRON, Attorney at Law; STEPHANIE
17 A. SCHRANDT, Attorney at Law (not present); DEBORAH A.
18 SMITH, Attorney at Law; and ANNIE Y.S. CHUANG, Attorney at
19 Law (not present).

20 The Defendant, R.J. REYNOLDS TOBACCO COMPANY, was
21 represented by THEODORE M. GROSSMAN, Attorney at Law;
22 STEVEN N. GEISE, Attorney at Law; HAROLD K. GORDON,
23 Attorney at Law; DANIEL J. McLOON, Attorney at Law; and
24 ELIZABETH P. KESSLER, Attorney at Law.

25 (The following proceedings were held outside the
26 presence of the jury.)

27 THE COURT ATTENDANT: Please come to order.

28 THE COURT: Set to go, are we? Bring the jury in,

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1 please.

2 (Whereupon the following proceedings were held in
3 the presence of the jury.)

4 THE COURT: Good afternoon.

5 All set to go, Mr. Grossman?

6 MR. GROSSMAN: Thank you very much, your Honor.

7 Good afternoon, everyone. Good to see you all back.

8 * DIRECT EXAMINATION (Resumed) *

9 By THEODORE M. GROSSMAN, Attorney at Law, counsel for the
10 Defendant R.J. Reynolds Tobacco Company:

11 Q. Dr. Wecker, when we broke for lunch, we were looking
12 at chart number 536. Can we put it back up?

13 This chart shows that, among other things, by the
14 attributable risk formula, there are many more deaths
15 predicted than actually occur; is that correct?

16 A. Many more deaths attributed according to the formula
17 than actually occurred.

18 Q. Now, these things, such as lack of exercise and
19 unhealthy diet and lack of social support and overweight or
20 underweight are all among those things that were associated
21 with smoking; is that correct?

22 A. Yes.

23 Q. But just for clarification, you can't predict as to
24 any given smoker that a particular smoker lacks social
25 support, right?

26 A. Well, you can if you look at his questionnaire.

27 Q. That's the only way?

28 A. That's how you do it.

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1 Q. Because every smoker is different?
2 A. Right.
3 Q. Every nonsmoker is different?
4 A. Right.
5 Q. It's just -- it's just the clustering of factors
6 that's more common to one than the other; is that right?
7 A. Yes, it's a tendency.
8 Q. And it isn't that smoking causes that, just that
9 they're associated, right?
10 A. They're associated, not a causal thing.
11 Q. Now, we were, as we were leaving off, getting to the
12 50-percent estimate or 40 to 50 percent as is sometimes
13 stated. You said it was inaccurate and unreliable just as
14 the 400,000 figure is.
15 By the way, let me pose to you that Andrew
16 Schindler, the CEO of R.J. Reynolds, testified by
17 deposition in this case that he could not state to any
18 degree of accuracy how many deaths could be attributed to
19 smoking or caused by smoking. He didn't say "attributed".
20 He was asked "were caused by smoking".
21 Can you say how many deaths were caused by smoking?
22 A. No, not caused by. I can do this attributable death
23 calculation, but it is not legitimate to interpreting as an
24 amount caused by smoking.
25 Q. Can anyone say, based upon the data that has been
26 available, how many deaths in the United States annually
27 are caused by smoke?
28 A. No. I don't believe anybody has found a way to even

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1 come close to that. There have been some attempts, but
2 they've all run up against the problem of too many factors
3 and too complicated a situation, lack of data.
4 Q. All right. Now, getting to the 50-percent issue.
5 Why don't we pull up your chart which is, I believe, number
6 544. And I would like to do this. Here we go.
7 Explain this chart to the jury, Dr. Wecker.
8 (DEM-000544, Deaths Attributable
9 to Risk Factors Overstate Actual
10 Deaths, was marked for
11 identification.)
12 A. This is the same point being made that the previous
13 chart made in that whether you do the attributable death
14 calculation on a percentage basis or whether you do it on
15 an accounting basis, either way you do it, the results are
16 not reliable as actual causal calculations but, rather,
17 would overstate the degree to which any one fact is
18 responsible for mortality.

19 Q. So these calculations are the same?
20 A. It's the same calculation. One is percent basis,
21 one is accounting basis.
22 Q. Now, I want to see if we can personalize this in a
23 way. Let's say somebody died of a heart attack at age 70,
24 before a normal life expectancy, okay? And that person had
25 an unhealthy diet, one related to heart disease.
26 Would his death be attributed to this formula
27 unhealthy diet?

28 A. His death would increase the mortality and, in turn,
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1 through the formula there would be a increase in the

2 attribution to deaths from unhealthy diet.
3 Q. If that same person didn't exercise, would his death
4 also be attributed to a lack of exercise?
5 A. Yes. It would increase that one, too.
6 Q. If he smoked, would his death be attributed to
7 smoking?
8 A. It would increase that category, too.
9 Q. If he had high blood pressure, would his death be
10 attributed to high blood pressure?
11 A. That same single death would increase all of the
12 categories mentioned.
13 Q. And overweight?
14 A. Any of them.
15 Q. Now, Doctor, you've described some problems with the
16 attributed death calculations relied on by the plaintiffs
17 based on the CPS-II data.

18 By way of further illustration of the difficulties
19 in the 400,000 attributable death number and in the use of
20 such data to suggest a cause and effect relationship, could
21 we look at demonstrative 538, please?

22 What does this show, Doctor?
23 (DEM-000538, Relative Risk of
24 Death from Cirrhosis of Liver,
25 Part II, was marked for
26 identification.)
27 A. This chart displays relative risk. Relative risks
28 we discussed today already. They're the ratio of the death
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1 rate in one group compared to another group.
2 The first bar of never-smokers, which is set equal
3 to one, that's the reference base group, and they have a
4 certain death rate in this case from a disease -- cirrhosis
5 of the liver, just looking at cirrhosis of the liver in
6 this chart.

7 The light smokers, that means smokers who are
8 smoking, I think, less than 20. I forgot the exact number.
9 It doesn't mean light cigarettes; it means fewer
10 cigarettes. And the light smokers, they have well over
11 three times the death rate of the never-smokers from
12 cirrhosis of the liver.

13 Then the heavy smokers, the one's that smoke more
14 than the category I just discussed, they have a well over
15 five times the death rate from cirrhosis of the liver that
16 the never-smokers have. So its a fairly large relative
17 risk difference, difference in mortality for smokers
18 compared to the never-smokers.

19 Q. Now, you have seen the testimony of doctors Doll and
20 Davis who said they knew the relative risk for cirrhosis
21 increased with smoke; is that right?

22 A. Yes.

23 Q. You have also seen the testimony of both of them
24 that smoking doesn't cause cirrhosis; is that correct?

25 A. Yes.

26 Q. But nonetheless, the relationship, the statistical
27 relationship between smoking and cirrhosis of the liver is
28 not only a very strong one, but it is dose dependent; is

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1 that right?
2 A. Yes. It is what they call dose-response phenomena:

3 The more smoking, the higher the relative risk. But as you
4 point out in the question, and I will agree with that
5 aspect, it's understood and other witnesses here have
6 stated, that smoking doesn't cause cirrhosis of the liver.
7 Q. Well, almost by way of summary, Dr. Wecker, you have
8 a chart, Number 539 -- if we can bring that up -- called
9 Relative Risks are Affected by Non-Smoking Behaviors. This
10 refers to all causes of death, right?

11 (DEM-000539, Relative Risks are
12 Affected by Non-Smoking Behaviors,
13 was marked for identification.)

14 A. Yes.

15 Q. Heart disease, lung cancer, everything that affects
16 mortality?

17 A. Yes.

18 Q. What does this chart show?

19 A. What I did here, this is a chart comparing two
20 groups: Smokers and never-smokers. But rather than just
21 using all the smokers and all the nonsmokers in the CPS-II
22 data, since I have more than a million questionnaires
23 there, I only included for the smokers -- the group on the
24 right -- the smokers that answered their questionnaire that
25 they were of average weight, they did moderate exercise,
26 and they ate a good diet.

27 And the smokers that were extreme in their unhealthy
28 choices, are not included here. I just included the sort

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1 of -- these are not Mr. Perfects, but they are moderate in
2 their other factors as to exercise, diet and weight. So
3 that's the smoking group, the moderate smoker, moderate in
4 other factors.

5 In the never-smokers, I restricted those to be the
6 group that was overweight, did no exercise, and ate a bad
7 diet.

8 I like to think of this as the world upside-down.
9 The world, as it presents itself in the data, it's the
10 smokers that have the excess of other unhealthy factors.
11 But I've created a fictitious world here just by limiting
12 who gets into my chart, in which it is the nonsmokers that
13 have the unhealthy other habits and the smokers that are
14 more moderate.

15 Then when I compare them on this, it is the smokers
16 who have substantially lower mortality than the nonsmokers.
17 And I did all this to illustrate that these other factors
18 have force in this calculation. And depending on how many
19 and how serious these other factors are in one group or the
20 other, it can push these relative risk numbers up or down.

21 Q. All right. And indeed, if -- in this chart the
22 other factors far outweigh smoking in terms of mortality.

23 A. You can't say that. You see, you haven't studied.

24 Q. Okay. Yeah.

25 A. You can't separate them out. All you can say is
26 that that group of smokers with average weight, moderate
27 exercise, good diet, plus all the other things they came
28 with that I can't write down here -- like whatever their

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1 income was -- has that mortality rate.
2 Q. You can't break down what their income was because
3 you don't know from this; is that right?

4 A. That's true. But the point is, I can't even -- I
5 can't separate out the influence of the weight, exercise
6 and diet from the smoking; but I can tell you that that
7 group of smokers with those behaviors has a lower death
8 rate as a total. Exactly what causes it, that's not
9 something I can unravel.

10 Q. Speaking of the CPS-II database, which is what we
11 have been talking about throughout all of this,
12 understanding it's limitations, did I also ask you to look
13 at that database to determine what the relative risks are
14 for dying at a later age if someone stops smoking by the
15 age of 30?

16 A. Yes, you asked me to do that calculation.

17 Q. And the calculation showed exactly no difference?

18 MR. PAUL: Your Honor, I am going to object. May we
19 approach?

20 THE COURT: Yes.

21 MR. PAUL: This was never brought up as an opinion
22 in his deposition. He never discussed this at his
23 deposition. He never indicated he was going to be asked
24 about this subject in his deposition. He never indicated
25 he had been asked to do any calculations of anything in his
26 depositions. I am going to object. It is beyond the
27 opinions given in his deposition.

28 MR. GROSSMAN: I can rephrase the question.

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1 MR. PAUL: Shhhh.

2 MR. GROSSMAN: But, indeed, in his deposition he was
3 asked -- I don't have it here in front of me -- he was
4 asked at his deposition, What will be the scope of your
5 opinion?

6 And he read back the two paragraphs that I indicated
7 what the scope of his opinion was, which encompassed at
8 least statistical database CPS-II and the relative risks of
9 smoking.

10 MR. PAUL: I will withdraw just to move it along.

11 Q. (By MR. GROSSMAN): Okay. Restart the question. I
12 asked you to look at what the relative risk would be for
13 dying years later for a person who stopped smoking -- who
14 smoked, but stopped by the age of 30; is that correct?

15 A. Yes, you asked me to do that.

16 Q. And, indeed, the CPS group, CPS-II group, were made
17 up of people 30 and above?

18 A. Yes, 35 and above.

19 Q. Thirty-five and above. So some of them reported
20 having smoked in the past and stopped by the age of 30?

21 A. Right. When they fill out their questionnaire, they
22 can tell you, even though they are 35 today, they started
23 at whatever age and quit at age 30.

24 Q. And you made a comparison using exactly the same
25 formula that Dr. Davis referred to and was in the Surgeon
26 General's report of all cause mortality among those people
27 who smoked but stopped by the age of 30 and those people
28 who never smoked in their life?

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1 A. Correct.

2 Q. And isn't it correct that there was absolutely no
3 difference in their mortality?

4 A. That's correct.

5 Q. Now, Doctor, by way of summary, when Dr. Davis
6 attributed 400,000 deaths to cigarette smoking based upon
7 the CPS-II data, that testimony was inaccurate and
8 unreliable?
9 A. It was when he said the word "caused by". You can
10 do the formula, but he went on to say "caused by", and
11 that's where I think he errored in his interpretation.
12 Q. And, indeed, the CPS-II database is itself
13 unreliable, even for attributable risk, to the extent it
14 purports to be of the general population?
15 A. That's the key. You got to it. It's not a
16 representative sample of the United States. So it can tell
17 you about itself, but it is not a representative sample to
18 tell you about the United States as a whole.
19 Q. I feel like a student when you tell me I have gotten
20 to it.
21 A. Sorry.
22 Q. Want to make sure that I am exact here for you.
23 Is it also true that the testimony and argument that
24 50 percent of all smokers will die because of their smoking
25 is inaccurate, unreliable, unscientific?
26 A. Yes. Because it says "caused" and that's not a
27 calculation that has a causal basis.
28 MR. GROSSMAN: Thank you very much, Doctor.
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1 THE WITNESS: Thanks.
2 THE COURT: Mr. Barron.
3 MR. BARRON: I have no questions.
4 THE COURT: Mr. Paul.
5 MR. PAUL: Thank you very much.
6 * CROSS-EXAMINATION *
7 By GARY M. PAUL, Attorney at Law, counsel for the
8 Plaintiffs:
9 Q. Can you see me over this?
10 A. Yes, sir.
11 Q. Doctor, just so I am clear, basically it is your
12 opinion that every medical organization in the world that
13 says smoking causes lung cancer is wrong, correct?
14 A. No, that is not my opinion at all.
15 Q. You believe smoking causes lung cancer?
16 A. I am as a statistician, and that's who I am. I
17 can't prove one way or another. I can see that the
18 evidence is very compelling. Others outside the field of
19 statistics have reached that conclusion, and I don't
20 quarrel with them.
21 Q. Do you yourself -- so you don't quarrel with the
22 conclusion that's been reached by the Surgeon General that
23 smoking causes lung cancer?
24 A. I don't quarrel with that. The Surgeon General says
25 that. He can't reach that conclusion based on statistics
26 but makes it as a judgment based upon factors outside of
27 statistics. That's what is in the Surgeon General's
28 report, and I can understand that.
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1 Q. Whether you understand it or not, my question is, do
2 you disagree with the opinion that's been reached by the
3 Surgeon General of the United States -- that's been the
4 Surgeon General's opinion for the last 40 years -- that
5 smoking causes lung cancer?

6 A. I don't disagree with that.
7 Q. Okay. And you are not here to say that smoking
8 didn't cause lung cancer in Mr. Lucier, are you?
9 A. I have no opinion about health factors for
10 Mr. Lucier.
11 Q. You are going to leave it to doctors, aren't you?
12 A. Or anybody else, but not me.
13 Q. Okay. And you are not here to say that that smoking
14 doesn't cause coronary heart disease, are you?
15 A. No, I can't answer whether something does cause or
16 does not cause. As a statistician with nonexperimental
17 data, I am not able to give you opinions in that area.
18 Q. You accept the Attorney General's (sic) opinion,
19 however, that it does, correct?
20 A. I didn't say I accept it. I said it is compelling
21 and I don't disagree with it. I have no basis to affirm it
22 because I am a statistician. But it certainly is
23 compelling and I wouldn't dispute it.
24 Q. You have, however, disputed some of the leading
25 epidemiologists in the world on the subject of smoking and
26 lung cancer, have you not?
27 A. When they make mistakes, I point them out.
28 Q. Well, let's talk about the people you think have

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1 made mistakes. Sir Richard Doll, who is clearly one of the
2 most famous epidemiologists?
3 MR. GROSSMAN: Objection, your Honor, argumentative.
4 THE COURT: Sustained.
5 Q. (By MR. PAUL): You know who Sir Richard Doll is,
6 don't you?
7 A. Sure, sure. And I agree, he's --
8 Q. I haven't asked you anything further.
9 A. I am sorry. I was trying to help you; he is a
10 luminary. I am with you on it.
11 Q. Okay. You believe his studies are flawed, correct?
12 A. I have made no statement about his studies being
13 flawed.
14 Q. Do you remember the study that was done by Sir
15 Richard Doll and Dr. Peto?
16 A. I have read it.
17 Q. Was it not your opinion in the Whitely case that
18 that study was flawed?
19 A. It may be in that other case there was something
20 that came up on that, but I would have to refresh my
21 recollection. I hadn't discuss it in this case.
22 Q. No, you didn't discuss it in this case. But that
23 was your opinion, was it not, sir?
24 MR. GROSSMAN: Objection.
25 THE WITNESS: I will take your word for it. I don't
26 recall what specific work I did on that matter.
27 Q. (By MR. PAUL): How about the Dr. Hammond 1966
28 population study? Your opinion was that was flawed?

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1 A. Well, it was a very -- I don't recall if I had that
2 opinion, but I will have it now. That was a very early
3 study and pretty weak. But it was a pioneering piece of
4 work.
5 Q. I would like to read from Dr. Wecker's testimony
6 given in the Whitely matter on February 28, 2000. I am

7 just going to read page 4613, line 25 through 27.
8 MR. GROSSMAN: Can you give a copy to the witness,
9 please?
10 MR. PAUL: I just have one copy.
11 MR. GROSSMAN: We do have a copy.
12 MR. PAUL: Okay.
13 MR. GROSSMAN: This is line 25 through 27.
14 Q. (By MR. PAUL): I might direct your attention on
15 that same page, Doctor, page 4613, if you could -- if you
16 look at lines 27 through 28 on page 4612, it puts in
17 context that it was Dr. Doll's study of British doctors --
18 A. Yes.
19 Q. -- regarding lung cancer.
20 A. Yes.
21 Q. And the question to you was:
22 (As read:) Was Dr. Doll's studies
23 statistically flawed?
24 Answer: Yes. I could point out
25 weaknesses that are fair -- I believe
26 it is fair to call it a flaw, yes.
27 (End of reading.)
28 A. Yes.

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1 Q. Do you recall giving that opinion?
2 A. I don't actually remember it, but I can read it here
3 so I must have said it.
4 Q. And do you recall saying the same thing about the
5 Hammond 1966 population study, CPS-I, that it was flawed?
6 A. I don't have a specific recollection of saying it,
7 but I am quite able to agree with that point now. There
8 were some weaknesses in that study.
9 Q. And now it is your opinion the CPS-II study is
10 flawed?
11 A. See, there is no CPS-II study; you have to be more
12 clear.
13 Q. Well, the analysis of the CPS-II study that was done
14 by the Surgeon General was flawed?
15 A. Let me understand that. As meaning as to the
16 attributable death calculation in the Surgeon General which
17 was based on CPS-II, that's a fair understanding.
18 There, they did not make a mistake in their
19 calculation. The issue that I point out is in the
20 interpretation of the results, and they're pretty cautious
21 to call it "attributable" death. But in this courtroom,
22 Dr. Davis called it "cause".
23 Q. Dr. Davis didn't write the Surgeon General's report,
24 did he?
25 A. I think he was a senior editor, one of the authors.
26 Q. There were many people that were involved in
27 preparing the Surgeon General's report in 1989, were there
28 not?

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1 A. Yes, sir, that's true.
2 Q. In fact, this is Exhibit AS-00035, Reducing the
3 Health Consequences of Smoking, a Report of the Surgeon
4 General, 1989, 25 Years of Progress.
5 This is the one we're talking about?
6 A. Yes.
7 MR. PAUL: Can I have the Elmo, please?

8 Q. (By MR. PAUL): That's the cover sheet for it,
9 correct?
10 A. Yes.
11 Q. What I would like to do, see if you recall some of
12 this. In the acknowledgement page, do you see one of the
13 people that was acknowledged was Thomas Novotny, M.D.,
14 Medical Epidemiologist, from the Office on Smoking and
15 Health Center for Chronic Disease Prevention?
16 A. Yes.
17 Q. Epidemiologists -- you are not an epidemiologist,
18 are you, sir?
19 A. I am when I work on issues of human health because I
20 am a statistician who sometimes works on issues of human
21 health.
22 Q. Do you have a degree in epidemiology, sir?
23 A. No, in statistics. Applied to humans sometimes.
24 Q. All right. Going on, do you see one of the people
25 involved in the report was Jeffrey E. Harris, M.D., Ph.D.,
26 Visiting Associate Professor, Department of Biostatistics,
27 the Harvard School of Public Health, Boston, Massachusetts.
28 Do you know him?

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1 A. Yes.
2 Q. Pretty good statistician?
3 A. He's good enough. He is credible but imperfect,
4 like everyone.
5 Q. He is imperfect?
6 A. I didn't -- I don't know quite how to gauge "is he
7 credible". You have to listen to what he says and weigh
8 it. But he's -- I would give him an A grade.
9 Q. How about Juliette Kendrick, M.D., Deputy Chief,
10 Pregnancy Epidemiology Branch, Department of Reproductive
11 Health, Atlanta, Georgia?
12 A. I don't know her.
13 Q. Again, we talked about Dr. Novotny. Do you know
14 Dr. Novotny?
15 A. No, I haven't met him.
16 Q. How about John P. Pierce, Ph.D., Chief of
17 Epidemiology Branch, Office on Smoking and Health.
18 Do you know Dr. Pierce?
19 A. No.
20 Q. How about Patrick Remington, Master of Public
21 Health, Medical Epidemiologist, with the Bureau of
22 Community Health and Prevention, Wisconsin.
23 Do you know that person?
24 A. No.
25 Q. How about Owen T. Thornberry, Director, Division of
26 Health Interview Statistics, National Center for Health
27 Statistics, Center for Disease Control, Hyattsville,
28 Maryland.

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1 Do you know that person?
2 A. No, I haven't met him.
3 Q. And of course we talked about Sir Richard Doll,
4 Cancer Epidemiology and Clinical Trials at Oxford, England.
5 You anticipate, would you not, that these people
6 involved in writing this report would catch any errors in
7 statistics in epidemiology, would you not?
8 A. Yes. I would anticipate that the points that I made

9 here are points that they wouldn't let go and you can find
10 that they would insist that they be in the report
11 somewhere, and they are.

12 Q. You are familiar with this chart from the 1989
13 report, are you not, Age-Adjusted Cancer Death Rates?

14 A. Yes, I have seen it.

15 Q. Do you think that climb in cancer death rates is
16 real?

17 A. Yes. That's a measured number.

18 Q. This is page 130 of the report talking about
19 previous estimates of attributable risk from cigarette
20 smoking. It says:

21 (As read:) Many authors have
22 estimated the number or proportion of
23 deaths attributable to cigarette use
24 either from a single cause, a group of
25 causes, or all causes.
26 (End of reading.)

27 Talk about Ravenholt, Rice, McIntosh, Whyte, Hammond
28 and Seidman; Doll and Peto; Garfinkel; U.S. Office of
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1 Technology Assessment; Schultz; Goldbaum.
2 It says:
3 (As read:) Doll and Peto estimated
4 83,000 smoking-attributable deaths
5 from lung cancer in 1978.
6 (End of reading.)
7 That's a report you said was flawed?

8 A. Which one?

9 Q. Doll and Peto.

10 A. I don't remember what the flaws were that I had in
11 mind then but probably had some if I said so.

12 Q. (As read:) Rice and colleagues
13 estimated 270,000 smoking-attributable
14 deaths among U.S. adults in 1980,
15 including 86,000 from CHD --
16 (End of reading.)
17 That's coronary heart disease, correct?

18 A. Yes.

19 Q. (As read:) -- 75,000 from lung cancer
20 and 14,000 from emphysema, chronic
21 bronchitis. The Centers for Disease
22 Control has estimated 315,000
23 smoking-attributable deaths from 1984.
24 (End of reading.)
25 Then it goes on. They were all wrong?

26 A. No. I have no problem with that paragraph because
27 it says "smoking-attributable deaths"; it doesn't say
28 "smoking-caused deaths".

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1 Q. Whether smoking causes a death is something you
2 would leave to a doctor, correct?

3 A. With this kind of data, yes. It is something a
4 statistician can handle sometimes, but not in this case.

5 Q. In discussing CPS-II, there was a whole chapter,
6 chapter three in this report on CPS-II, was there not?

7 A. Yes, I am familiar with it.

8 Q. They talked about some of the problems that you talk
9 about in dealing with CPS-II, did they not?

10 A. You have to call my attention to something.
11 Q. Sure.
12 MR. GROSSMAN: Mr. Paul, what page?
13 MR. PAUL: I am sorry. This is page 141.
14 Q. (By MR. PAUL): It says:
15 (As read:) CPS-II was instituted in
16 September 1982. The study, conducted
17 in all 50 states, had the same
18 enrollment plan and organizational
19 structure as CPS-I. (End of reading.)
20 CPS-I had about a million people in the study,
21 correct?
22 A. Right.
23 Q. It says:
24 (As read:) Over 1.2 million persons
25 were enrolled. As in CPS-I, subjects
26 were predominantly
27 white --(End of reading.)
28 Which is something you talked about here, right?
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1 A. Yes, that's true.
2 Q. That's in the report, is it not?
3 A. Yes.
4 Q. (As read:) And more educated than
5 the general population.
6 (End of reading.)
7 That's something else you talked about, right?
8 A. Yes.
9 Q. In fact, that sort of fits the profile of my client,
10 doesn't it? Mr. Lucier, white, educated?
11 A. I will take your word for it. I have done no study
12 of your client.
13 Q. Okay. It says:
14 (As read:) While two percent of CPS-I
15 participants were black, the
16 proportion increased to four percent
17 in CPS-II. Still, black persons were
18 underrepresented. (End of reading.)
19 Sort of what you were talking about, correct?
20 A. Yes.
21 Q. (As read:) Like CPS-I participants,
22 CPS-II enrollees were predominantly
23 over 40 years of age. Unlike CPS-I,
24 the mode of their age distribution was
25 50 to 59 years. (End of reading.)
26 Then they go on to talk about how it is supposed to
27 continue four more years, correct?
28 A. Yes.
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1 Q. Just so I am clear, doing any kind of study where
2 you have 1.2 million people participating, that's a big
3 study, isn't it?
4 A. Yeah. It's a shame it wasn't a random sample.
5 Q. Okay. Going on it says:
6 (As read:) Studies of the transition
7 between the seventh and the eighth
8 revisions of the International
9 Classification of Diseases have shown
10 significant noncomparability.

11 (End of reading.)
12 And talks about:
13 (As read:) Similar results have been
14 reported for the transitions between
15 the eighth and ninth revisions.
16 (End of reading.)
17 Correct?
18 A. Yes.
19 Q. Finally it says:
20 (As read:) Both CPS-I and CPS-II are
21 more representative of middle-class,
22 white Americans than the U.S.
23 population as a whole. Still, the two
24 cohorts were derived from virtually
25 identical sampling schemes. An
26 analysis of the entrants have shown
27 similar demographics characterization.
28 These considerations enhance the
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1 validity of comparisons between the
2 studies. (End of reading.)
3 Correct?
4 A. I read that, yes.
5 Q. You took that into consideration, in reaching your
6 opinion, right?
7 A. Yes.
8 Q. Now, just so I am clear, in your opinion, there is
9 no way to prove that cigarette smoking causes lung cancer,
10 correct?
11 A. No, that's not true. There is no way for a
12 statistician to prove it using nonexperimental data. I
13 didn't say there is no way to prove it, just that I can't
14 do it with this data.
15 Q. Well, no statistician, no epidemiologist can ever
16 prove, in your opinion, that smoking causes lung cancer,
17 right?
18 A. Yes, I think that's fair.
19 Q. So when Dr. Richard Doll said lung cancer causes or
20 smoking is caused by lung cancer (sic), he was wrong,
21 correct?
22 A. I don't think so. I am not saying that. May I
23 elaborate?
24 Q. Well, he was correct when he says smoking causes
25 lung cancer in analyzing his studies? Was he correct?
26 A. He was incorrect if he was basing it entirely on
27 statistical data. But he may well have been basing it on
28 other information outside the world of statistics, in which
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1 case I couldn't quarrel with him.
2 Q. Have you read his studies?
3 A. Yes, most of them.
4 Q. Well, his first studies that were done in the early
5 fifties, didn't he say that based upon epidemiological
6 analysis, it is his opinion that smoking causes lung
7 cancer?
8 MR. GROSSMAN: Objection, your Honor, misstates the
9 testimony. If counsel wants --
10 MR. PAUL: I am just asking.
11 THE COURT: It's a question.

12 MR. GROSSMAN: If counsel wants to put it in front
13 of him, put the testimony --
14 MR. PAUL: I am just asking if that's his recall.
15 THE COURT: Not required. Go ahead.
16 THE WITNESS: I believe he reached that as a
17 judgment but never claimed to have proved it based on the
18 statistical evidence alone.
19 Q. (By MR. PAUL): How about Dr. Wynder, did he ever
20 reach the opinion that smoking caused lung cancer?
21 A. I believe he did as a judgment, but didn't base the
22 proof on the statistical evidence.
23 Q. So there's no way statistically. In fact, I think
24 you said in your deposition, if I am not incorrect --
25 correct me if I am wrong -- when Ms. Alexander took your
26 deposition, you stated that the only way statistically it
27 could be proved that smoking causes lung cancer is to get a
28 group of people, selected randomly, have one-half of
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1 them -- you got to stick with me here; statistics wasn't my
2 best course.
3 A. I am with you.
4 Q. But get one-half of the group and have them not
5 smoke and one-half of them, basically force them to smoke,
6 right?
7 A. Right.
8 MR. GROSSMAN: Object to the form of the question.
9 THE COURT: Sustained. Use of the word "force".
10 Rephrase your question.
11 Q. (By MR. PAUL): Well, you would have to get them to
12 smoke, right? You have to pick this group of random
13 people --
14 A. Right.
15 Q. -- and say, This half of you don't smoke, this half
16 of you you got to smoke, right?
17 A. Got the essential idea. And of course that's not a
18 practical thing, so that's the problem.
19 Q. Right. I think the comment that you use is it
20 wouldn't be permissible, right? You can't go to people and
21 say, You folks all got to smoke, right?
22 A. That's correct.
23 Q. Right. And because you can't do that kind of
24 clinical analysis, you will never be able to prove
25 statistically that smoking causes lung cancer?
26 A. That's correct. You can accumulate evidence, but
27 you can't get to the level of statistical proof without an
28 experiment.
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1 Q. And so from a statistician's standpoint, what you
2 are saying to us -- well, let me take a different approach
3 here.
4 If someone comes into this courtroom and says, "I
5 work for Philip Morris. In my opinion, I believe smoking
6 causes lung cancer," you wouldn't argue with that person,
7 would you?
8 A. No, I wouldn't.
9 Q. Because that is sort of your belief, too?
10 A. No. I believe sort of, but not to the level of
11 proof. I believe the evidence is really very strong in
12 favor of that proposition but, I am not ashamed to say, it

13 doesn't rise to the level of statistical proof.
14 Q. Would you argue with somebody that comes in and
15 worked for RJR and said, Smoking is extremely risky, is an
16 extreme risk factor, for causing lung cancer.
17 Would you agree with that?
18 A. You just added the word "cause". As far as it being
19 an extreme risk factor, that's easy to agree with. I will
20 say that. As to whether -- we just don't have such a term
21 as a "causal risk factor" with this set up.
22 Q. If I were to ask you what is it in smoke that causes
23 lung cancer, you wouldn't be able to tell me, would you?
24 A. No. It is outside my area.
25 Q. You said that you started your consulting company in
26 about 1990; is that right?
27 A. Yes.
28 Q. And in 1990 is when you started working for the
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1 tobacco companies, is that about right?
2 A. First time I was asked to look at the CPS-II data,
3 yes.
4 Q. In fact, before 1990 when you opened up your
5 consulting company, before the tobacco companies had
6 approached you, you had never looked at any tobacco-related
7 issue; isn't that a true statement?
8 A. That's true.
9 Q. And what happened in 1990 is that you were
10 approached by the tobacco companies who wanted you to
11 analyze the CPS-II data because of the statements being
12 made in the Surgeon General's report in 1989 saying lung
13 cancer caused upwards of 400,000 deaths a year, correct?
14 MR. BARRON: Your Honor, I am going to object, vague
15 and ambiguous.
16 THE COURT: Sustained.
17 MR. BARRON: Thank you.
18 Q. (By MR. PAUL): In 1990, is that the year you met
19 Mr. Grossman?
20 A. No.
21 Q. I think you said you started doing some work for
22 tobacco companies in 1990, correct?
23 A. Yes.
24 Q. What companies were those?
25 A. Well, I don't know. I was approached by a lawyer
26 who is not here. If you like, I will tell you what they
27 asked me to do.
28 Q. Well, you can do that in a second. We'll talk about
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1 that, what they asked you to do. But you were approached
2 by a lawyer for a tobacco company?
3 A. I understood that they were lawyers representing one
4 or more tobacco companies. I didn't ask them the names of
5 them. I was just listening to what the work was that they
6 were interested in me doing.
7 Q. And they, whoever this lawyer was, asked you to
8 analyze the CPS-II data?
9 A. Yes, partly.
10 Q. What else did they ask you?
11 A. They wanted me to go through the Surgeon General's
12 report also and check it for correctness and comment on the
13 statistical aspects of that report.

14 Q. And they paid you for that, didn't they?
15 A. Yes.
16 Q. As a layperson, it seems to me to go through 1.2
17 million questionnaires as shown in the demonstratives in
18 front of the jury was a gargantuan task, was it?
19 A. That may overstate it; they're all on computer
20 records. If you have big enough computers, it isn't so
21 hard. But it is a big job.
22 Q. You didn't go through them individually. I thought
23 I heard they were all gone through individually, each
24 questionnaire.
25 A. Through the use of computers I would go through them
26 and I would check them, but I didn't look at them each with
27 my own eye.
28 Q. How long did it take you to do that?
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1 A. I was working on other things at the same time. On
2 and off for a year or more.
3 Q. About a year?
4 A. That's a vague recollection. I wasn't working full
5 time on it.
6 Q. And when you finished that work, did you produce a
7 report?
8 A. No. I don't have a report.
9 Q. When you finished that report -- or when you
10 finished your work, had you reached the opinion that you
11 told us about here in court?
12 MR. GROSSMAN: Objection, your Honor. May we
13 approach?
14 THE COURT: We'll take a ten-minute recess. Please
15 don't discuss it.
16 (Whereupon the following proceedings were held
17 outside the presence of the jury.).
18 THE COURT: Okay, the jury is outside.
19 MR. GROSSMAN: Your Honor, I believe there was a
20 period of time when Dr. Wecker was a nondisclosed, retained
21 expert before he was engaged in any particular case. And
22 the testimony that -- the question Mr. Paul was asking was
23 intended to elicit a response or a suggestion and indicates
24 to the jury that some kind of report should have been
25 submitted.
26 I think the implication is incorrect and it deals
27 with an area that was privileged at the time and that was
28 appropriate. I don't understand where this is going.
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1 MR. PAUL: Once a retained expert is put out there,
2 he is an expert and whatever he has done is open to
3 investigation. And I don't know what, frankly,
4 Mr. Grossman is talking about. He thinks I am going in one
5 direction; I am not going in that direction at all. All I
6 was asking, whether he ever -- he did this huge study. I
7 just wonder if he ever did a report about it. But I am
8 going someplace else than the tobacco companies with that
9 line of questioning.
10 THE COURT: We'll just wait for the question and the
11 objection.
12 MR. PAUL: Thank you.
13 THE COURT: How much more do you have?
14 MR. PAUL: I don't think a whole lot longer. I

15 don't want to button myself in here.
16 THE COURT: Okay.
17 MR. PAUL: Probably on the order of another
18 half-hour.
19 MR. BARRON: I was just putting out I don't know the
20 history of all of this, but I do think we ought to have a
21 little more precision with the personal pronouns and
22 "tobacco companies" and "they" did this. He's got
23 conspiracy instructions.
24 Why don't you just ask the fellow does he know the
25 name of the firm, does he know what company, and get on.
26 THE COURT: That's fair.
27 MR. BARRON: To me I think it's somewhat
28 disingenuous, not necessarily intentional, to kind of slop
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1 around this way. I just wish he would be more surgical in
2 his question. He said "a lawyer" approached him; let's
3 stick with the lawyer, the lawyer's name, and go on.
4 MR. PAUL: That's what I was trying to ask him, who
5 the companies were.
6 THE COURT: Okay. What about this issue relating to
7 the juror that was raised this morning.
8 MR. PAUL: Your Honor, excuse me. I didn't mean to
9 interrupt. I think I asked for more time to think about
10 it. I think the general part at the beginning was totally
11 appropriate. I think once we start getting into whatever
12 you heard may be true, may not be true, I think that calls
13 for speculation on the part of the jury. I think it
14 heightens the issue somebody must have heard something and
15 if nobody else other than this juror who has already been
16 cautioned about it has heard anything, it causes them to
17 speculate. I don't think it is necessary to go beyond the
18 intro.
19 THE COURT: Including the part about reporting,
20 right?
21 MR. PAUL: Yes, your Honor.
22 THE COURT: Mr. Gordon.
23 MR. GORDON: I am sure my colleagues will add to my
24 comments with any thoughts. I thought the proposed
25 instruction your Honor penned was right on the money. I
26 thought it struck a nice compromise by making sure you
27 didn't overly dignify the specific situation brought to our
28 attention, yet emphasized the issue which is basing their
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1 eventual deliberations and decisions in this case on the
2 evidence and ignoring any information they hear outside the
3 courtroom and, in this particular instance, telling them
4 why. Or generally telling them why.
5 I think that extra part, given the conduct that
6 we've heard about, which is obviously troubling, is
7 appropriate here. I thought your Honor struck a nice
8 balance by not getting into the specific conduct, yet
9 giving them a reason why you have been telling this to them
10 all along throughout the trial.
11 I thought today's information warranted the more
12 complete version of the instruction the Court had drafted.
13 THE COURT: Mr. Barron.
14 MR. BARRON: To be very candid, I don't have any
15 strong feelings. I watched the jurors; they got the

16 message. The one who brought it to our attention kind of
17 nodded. I defer. I am not that concerned about it.
18 THE COURT: Okay. I will give it some thought, but
19 my -- I thought maybe I went a little overboard, frankly,
20 in terms of all the reasons, whatever. I talked about all
21 that at the beginning of the trial.
22 What I may do would be just to give the initial
23 part, then explain I told you all the reasons for this
24 earlier in the trial and I will just emphasize the
25 importance of abiding by it. That should suffice
26 understand the circumstances.
27 We'll take ten minutes.
28 (Whereupon a recess was taken.)
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1 THE COURT: Any concern? Mr. Anderson is having a
2 back problem and would like to stand.
3 MR. BARRON: No problem. Is the Court planning on
4 letting the jurors know so they don't think he is just
5 disengaged?
6 THE COURT: I think they probably know. If anybody
7 wants me to mention it, I will. What do you think?
8 MR. PAUL: If he would do something like this
9 (demonstrating).
10 THE COURT: I will tell him to stand if he is not
11 comfortable. Let me tell him, Aaron.
12 (Whereupon the following proceedings were held in
13 the presence of the jury:)
14 THE COURT: Mr. Anderson, I understand you are in
15 some discomfort today. I am sorry. I appreciate you
16 staying with us. If you need to stand up, stretch or
17 whatever, do so.
18 JUROR: Thank you.
19 THE COURT: Are you ready, Mr. Paul?
20 MR. PAUL: I am, your Honor. Thank you.
21 Q. (By MR. PAUL): Dr. Wecker, when we left off I was
22 asking you about the work that you had done on CPS-II, and
23 I think I had asked you whether, as a result of the work
24 that you did over that year period, whatever the time
25 period was, you had done a report.
26 Do you remember me asking you that question?
27 A. Yes.
28 Q. Did you do a report where you listed your findings
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1 as a result of your analysis of CPS-II?
2 A. No report at that time.
3 Q. Okay. Just so I am clear then, you never wrote to
4 the American Cancer Society, for example, and said -- well,
5 let me ask in a different fashion.
6 You never wrote to the Surgeon General, did you, and
7 say, Your calculations are all wrong?
8 A. No. I, in fact, got the same answer as he did when
9 I did the calculations.
10 Q. Well, did you write to him and say, Your conclusion
11 is wrong; there aren't that many -- well, let's see if we
12 can clear this up. Are you saying there are 400,000
13 attributable deaths?
14 A. Yes, because attributable deaths just means that's,
15 just a name for the result of that calculation.
16 Q. But you are --

17 A. The error I am complaining about is when anyone
18 interprets that as if it was a cause. Attributable deaths
19 are not the same as caused deaths.
20 Q. As I understand it in the Surgeon General's report,
21 they do use the term "attributable", that there are 390,000
22 attributable deaths, correct?
23 A. Right.
24 Q. You have no quarrel with that?
25 A. Not if it is understood what it means.
26 Q. Whatever the basis is, you have no -- if the Surgeon
27 General in the report -- I guess I can show you the page.
28 If the Surgeon General says there are 390,000 deaths per
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1 year attributable to cigarette smoking, in your opinion,
2 that is a correct statement?
3 A. If it is understood, it is correct. But it is
4 incomplete. A person could easily think that means caused.
5 It sort of sounds like it; that's where the confusion comes
6 in.
7 Q. Well, the Surgeon General uses "attributable"
8 sometimes and uses "cause" sometimes, doesn't it, in the
9 report?
10 A. Yes, in different sentences.
11 Q. All right. Okay. Anyway, going back to what we
12 were talking about, the report?
13 A. Okay.
14 Q. So the answer is you never contacted the Surgeon
15 General regarding any of your findings on your over
16 one-year analysis of CPS-II, would that be correct?
17 A. That's correct.
18 Q. Okay. You never have been hired or retained by the
19 Surgeon General to critique any studies or results, would
20 that be a correct statement?
21 A. That's true.
22 Q. Same for the Center on Disease Control, they have
23 never contracted with you, have they?
24 A. I worked with them. Not under contract, but on
25 government committee.
26 Q. World Health Organization?
27 A. I haven't worked with them.
28 Q. National Institute of Health, have you ever been
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1 asked by them to critique any studies on cancer and
2 smoking?
3 A. No.
4 Q. You have, however, had occasion to testify on behalf
5 of tobacco companies a number of times, or a tobacco
6 company or a number of times?
7 A. Yes.
8 Q. One of them we already touched on, the Whitely case,
9 correct? That was a case in San Francisco, as I recall,
10 correct?
11 A. Yes.
12 Q. How many times have you been called upon to testify
13 in court about your statistical analysis of CPS-II?
14 A. I think eight times. I could be off, but I think
15 its eight.
16 Q. Over what period of time?
17 A. About that many years.

18 Q. About over eight years?
19 A. Yes. I don't have an exact number of years for you,
20 but it has been over a number of years, perhaps eight.
21 Q. I got the impression from listening to the questions
22 that you know Mr. Grossman.
23 A. I met him once before. I don't know him well.
24 Q. When did you first meet him?
25 A. I met him in connection with one of those other
26 cases where he was the trial lawyer in the case.
27 Q. I didn't really want to get in the case, but the
28 I --

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1 A. Well, that's the answer, though.
2 Q. My question was when.
3 A. Oh, I am sorry. I am sorry. Maybe four years ago
4 or something. I am sorry. I will listen more carefully.
5 Q. Now, have you ever -- have you ever testified for a
6 plaintiff in a tobacco case?
7 A. No.
8 Q. You do get paid for your work on the cases, right?
9 A. Yes.
10 Q. In doing that analysis, that one-year analysis, how
11 much did you get paid for that?
12 A. Oh, that's too long ago for me to remember. But I
13 can make a guess, if you want. I just don't have it.
14 Q. Best estimate would be better than a guess.
15 A. It was more than a hundred thousand dollars, but I
16 don't have a number.
17 Q. Do you have any idea on the various cases that you
18 have had up to this time that involved tobacco, how much
19 you have been paid on those cases over the years?
20 A. No. I came prepared to tell you about this one, so
21 if you ask that I've got a number for you.
22 Q. Well, it is correct, is it not, some years are
23 heavier than other years. There have been years when you
24 have given upwards of two months out of the year working on
25 cases, correct?
26 A. Right. Some zero, some more substantial.
27 Q. Two months out of the year would be a substantial
28 number of hours, wouldn't it?

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1 A. Yes. That would be a heavy load.
2 Q. And on this case, I think you said you put in -- see
3 if my memory, 20 or 30 hours; is that correct?
4 A. I think I said something like that. But I actually
5 looked at the invoices before I came so I could give you
6 the exact dollar amount.
7 Q. Okay. Go ahead.
8 A. It was \$28,000 for the total company.
9 Q. And that's just for your analysis on this case?
10 A. That's just for this case, period, yes.
11 Q. Now, you had done -- unless I misheard, you had done
12 almost all this analysis before, correct?
13 A. Yes, a lot of it.
14 Q. I mean, is there something new that you did for this
15 case you had never analyzed before?
16 A. Not basically, but there are specifics. Like I had
17 to read the testimony in this case and think about the
18 issues in this case and look at the complaint, pull things

19 together that were appropriate. It didn't take a lot of
20 time, but it took some.
21 Q. Now, from the standpoint of one cancer being caused
22 by smoking, would you think that that's pretty much common
23 knowledge?
24 A. I think it is common belief, yes.
25 Q. Would you say that your belief that there isn't a
26 shown connection is outside the common knowledge?
27 MR. GROSSMAN: Objection, your Honor. Beyond the
28 scope.

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1 THE COURT: Sustained.
2 Q. (By MR. PAUL): Okay. Now were you able to use the
3 CPS-II data to -- well, let me go back a step. Did you do
4 any calculations based on the CPS-II data for this case?
5 A. Sure. Almost all the charts I had were based on
6 CPS-II data.
7 Q. And you said that the attributable -- the number of
8 deaths -- was there anything that you did to see -- let me
9 go back a step.
10 The 390,000 deaths, you say, was a correct
11 calculation.
12 A. The arithmetic is correct; the interpretation of
13 some witnesses here was incorrect.
14 Q. And that witness, primarily, is Dr. Davis; is that
15 correct?
16 A. Right.
17 Q. Did you try to do any calculations to come up with a
18 better number than the 390,000? A more correct number than
19 the 200 -- 390,000?
20 A. No, I've done no such calculation. Maybe I am not
21 quite accurate there. I have reviewed the work of others
22 who tried to do that; and in the course of that work, I've
23 done calculations. But initiated no such work.
24 Q. You've looked at what other people might have done
25 and reviewed their calculations, but you have not
26 independently done any yourself; is that a correct
27 statement?
28 A. I have done calculations, but they were calculations

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1 inspired by my analysis of what other people had done.
2 Q. And in your analysis of the CPS-II study, did you
3 yourself -- well, there must have been -- did you get into
4 the thought process that was behind it? What was the
5 concept behind going and getting 1.2 million people to fill
6 out these questionnaires?
7 MR. GROSSMAN: Objection to the form of the
8 question. Calls for speculation.
9 THE COURT: Sustained.
10 Q. (By MR. PAUL): Okay. I will ask you in a different
11 fashion. Did you do some -- was there anything that you
12 read or analyzed to see what the logic was behind the
13 CPS-II survey?
14 A. I formed an impression based on reading material
15 related to the survey, yes.
16 Q. There is material that talks about why the survey
17 was being done in a fashion it was being done, correct?
18 A. More or less, yes. It is not that clear.
19 Q. It is not that clear?

20 A. No. I don't think there is a really clearheaded
21 statement why they made certain choices. But there is
22 literature out there. I have read it and I have an
23 impression what it says.

24 Q. Was part of the goal of the CPS-II study to try to
25 get a handle on these issues that you are talking about,
26 risk factors for causing lung cancer, for example?

27 A. I don't think so. It turns out that the arithmetic
28 of a risk factor is one of the common devices of

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1 epidemiologists, but it is not really fundamental. I think
2 more fundamental is just disease rates.

3 Q. All right. Were there epidemiologists involved in
4 the original CPS-II study?

5 A. Yes, there were some.

6 Q. Were there --

7 A. I am sorry. I was thinking of the Surgeon General
8 report. I assume so, with respect to the CPS-II, but I
9 don't recall their names.

10 Q. Were there biostatisticians involved in the original
11 CPS-II study?

12 A. I assume so but I don't know so as a fact.

13 Q. Do you know whether these --

14 A. There is a problem. I am sorry. Could I help
15 clarify an issue that's going to bother us? Bothers me.

16 Q. I am not sure what we're talking about now.

17 A. That's the problem, "CPS-II study". I don't know
18 what you mean by "CPS-II study". There is a CPS-II survey,
19 and that I know what that is. But when you say CPS-II
20 study, I think you mean some study of this data and then I
21 don't know what you mean.

22 Q. Survey.

23 A. Okay.

24 Q. Same question. Were there people involved in
25 setting up the survey that had some background, training
26 and experience in doing so?

27 A. I assume so. But I wasn't there at the time, and I
28 don't know the names of who was working on it at the time.

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1 Q. Okay. Do you know, for example, whether the survey
2 was, in part, set up to try to get a large number of people
3 involved to try to get -- can't get a random sample, at
4 least get a huge number of people involved in order to try
5 to take some of these confounders out of this situation?

6 MR. GROSSMAN: Objection to the form of the
7 question.

8 MR. PAUL: I will withdraw it.

9 THE WITNESS: I can answer it, if you like.

10 Q. (By MR. PAUL): Okay.

11 THE WITNESS: I don't have a problem.

12 THE COURT: There is an objection. Restate the
13 question.

14 MR. PAUL: Okay. Be easier if he answered it.

15 MR. GROSSMAN: I will take my orders from him, quite
16 frankly.

17 Q. (By MR. PAUL): Okay. I will try to redo that
18 question.

19 A. Okay. She can do that.

20 Q. Maybe a better way to do it -- yeah.

21 Maybe a better way is to ask it in this fashion: Do
22 you know what thought was involved in setting up the survey
23 and whether thought was given -- in particular, what
24 thought was given to the issue that you mentioned, the fact
25 that it might be skewed toward more affluent, less
26 minorities involved?

27 A. I assume they saw that coming because they had been
28 through CPS-I and it happened there. I wasn't there at the

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1 time in 1982 or 1980. But if I had been, I would have told
2 them this is not a good way to spend money.

3 Q. Okay. The point is, you don't know?

4 A. No, I wasn't there.

5 Q. Okay. We touched on the subject of relative risk a
6 little bit. What is the relative risk for lung cancer for
7 men smoking?

8 A. Smokers versus never-smokers?

9 0. Yes.

10 A. It is above ten. Different people calculate it
11 differently, but 10, 12, something like that.

12 Q. You don't dispute, do you, that smoking can kill
13 people, do you?

14 A. Well, I don't know it as a fact. But the evidence
15 is pretty compelling that it is a dangerous thing to do.

16 Q. I wanted to ask you about one of the charts. I
17 think it is 525-A.

18 Is it possible to bring up that demonstrative,
19 please?

20 You had mentioned something about generalizations.
21 Is this chart a generalization?

22 A. No, this is just a report of facts.

23 Q. Okay. Do I understand what this chart says, that
24 smokers get little or no exercise?

25 A. Smokers in CPS-II --

26 Q. That --

27 A. -- compared to never-smokers.

28 Q. So there are no smokers that do exercise?

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1 A. No, there is a wide range of behavior differences.
2 But on the average, the smokers end up with less exercise.

3 Q. And in overweight or underweight, there are people
4 that, hopefully, are right on their weight that smoke?

5 A. Sure. There is a wide range.

6 Q. And there are some smokers that sleep more than
7 seven or eight hours a night, right?

8 A. Sure.

9 Q. Some smokers that do go to church or temple?

10 A. Sure.

11 Q. So you are not trying to draw a generalization here,
12 are you? Smokers are on the bad side, nonsmokers are on
13 the good side?

14 A. On the average, that's the way it turns out.

15 Smokers, more so than nonsmokers, have these risk factors.

16 O. So smokers tend to have fewer friends and relatives?

17 A. Yes. That's what they tell us when they answer
18 their questionnaire.

19 Q. And smokers tend to marry more than once?

20 A. Yes.

21 Q. And never-smokers don't tend to marry more than

22 once?
23 A. Some of them that do, some that don't, but the
24 smokers more so.
25 Q. Smokers are not married but also marry young?
26 A. The ones that are -- the ones that marry young tend
27 more to be smokers and the ones who are not married tend
28 more to be smokers.

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1 Q. Isn't that a little inconsistent, marry young but
2 not married?
3 A. No. Suppose a person marries at 16, gets divorced
4 at 18, fills out the questionnaire at 25. He is not
5 married; he also married young.
6 Q. And don't attend club meetings. What kind of clubs?
7 A. Well, we just have to look at the question. It just
8 says club.
9 Q. I was just wondering what kind of clubs. Okay.
10 Smokers tend to -- or nonsmoker tend to go to club
11 meetings?
12 A. That's the way they answer their questionnaire, more
13 so.
14 Q. The other one I wanted to ask you about, if I can
15 find it real quick here -- ah, this one.
16 A. Give me a number here.
17 Q. Sure. 539.
18 A. Okay. I have it.
19 Q. Again, statistics, but do I understand that you can
20 manipulate the numbers so you can come up with these two
21 things you came up with? Is that what you are saying?
22 A. I did manipulate.
23 MR. GROSSMAN: Well --
24 THE COURT: Is there an objection.
25 MR. GROSSMAN: Yes, to the form of the question.
26 Argumentative.
27 THE COURT: The question has been asked and
28 answered. Are you asking to strike the answer?

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1 MR. GROSSMAN: No.
2 THE WITNESS: But, your Honor, if I could complete
3 the answer?
4 THE COURT: If you need to.
5 THE WITNESS: Thank you.
6 Q. (By MR. PAUL): Just so we can hear the answer, you
7 did said you manipulate the numbers?
8 A. I did manipulate the computer to arrive at this, but
9 no in any devious fashion. I explained right on the chart
10 the nature of the calculations.
11 THE COURT: We need to switch reporters.
12 (Change of reporters.)
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